Filed 1/8/20 P. v. Bautista CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOSE PEDRO BAUTISTA, Defendant and Appellant.	G057499 (Super. Ct. No. 09NF3148) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Kimberly Menninger, Judge. Affirmed.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Julie L. Garland, Assistant Attorney General, A. Natasha Cortina and Lynne G. McGinnis, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

In 2011, the prosecution charged defendant Jose Pedro Bautista and two codefendants with murder. Bautista pleaded guilty to voluntary manslaughter as an aider and abettor. The trial court imposed a negotiated sentence of 14 years in state prison.

In 2018, the Legislature limited accomplice liability for murder. Generally, aiders and abettors can no longer be convicted of murder under the felony-murder rule or the natural and probable consequences doctrine. The Legislature also enacted a statute allowing eligible aiders and abettors previously convicted of murder to petition trial courts to vacate their prior convictions and be resentenced. (Pen. Code, § 1170.95, added by Stats. 2018, ch. 1015, § 4, eff. Jan. 1, 2019.)[1]

In 2019, Bautista filed a section 1170.95 petition claiming he was convicted of murder. The trial court summarily denied the petition because Bautista was not, in fact, convicted of murder, he was convicted of manslaughter.

On appeal, Bautista does not argue the merits; that is, he does not argue that he is eligible for relief under section 1170.95. Rather, Bautista argues the trial court committed error by not first appointing him counsel before ruling on his petition. We disagree and affirm the order of the court.

I

PROCEDURAL HISTORY

On October 12, 2011, the prosecution filed an information charging Bautista and two codefendants with four crimes: the murder of John Doe, conspiracy to commit an assault, active gang participation, and the attempted murder of J. Martinez. The complaint further alleged several related gang and firearm enhancements.

On September 28, 2012, Bautista pleaded guilty to three crimes: voluntary manslaughter, conspiracy to commit an assault, and active gang participation. Bautista

[1] Further undesignated statutory references are to the Penal Code.

admitted that he "aided and abetted in the unlawful killing" of John Doe and the crime was committed for the benefit of his gang. The prosecution dismissed the remaining charges and sentencing allegations. The trial court imposed a negotiated sentence of 14 years in state prison.

On January 23, 2019, Bautista filed a petition under section 1170.95. Bautista declared: "I pled guilty or no contest to 1st or 2nd degree murder in lieu of going to trial because I believed I could have been convicted of 1st or 2nd degree murder at trial pursuant to the felony murder rule or the natural and probable consequences doctrine." Bautista further stated: "I request that this court appoint counsel for me during this re-sentencing process."

On February 25, the trial court conducted a hearing on Bautista's section 1170.95 petition. Neither the parties, nor a court reporter, were present. The court summarily denied the petition. According to the court's minute order: "The petition does not set forth a prima face [*sic*] case for relief under the statute. A review of the court's records indicates defendant is not eligible for relief under the statute because the defendant does not stand convicted of murder . . . ."

II

DISCUSSION

Bautista argues the trial court's order was in error based on his reading of section 1170.95. This is a pure legal issue involving statutory interpretation; therefore, our review is de novo. (See *People v. Gonzalez* (2017) 2 Cal.5th 1138, 1141.)

A. Principles of Statutory Interpretation

When construing a statute, our goal is to ascertain legislative intent to effectuate the purpose of the law. (*People v. Jefferson* (1999) 21 Cal.4th 86, 94.) The words of a statute are to be given their usual and ordinary meaning. (*Granberry v. Islay*

Investments (1995) 9 Cal.4th 738, 744.) If the statutory language is unambiguous, "we presume the Legislature meant what it said, and the plain meaning of the statute governs." (*People v. Robles* (2000) 23 Cal.4th 1106, 1111.)

Courts may neither insert words nor delete words in an unambiguous statute; the drafting of statutes is solely a legislative power. (*People v. Hunt* (1999) 74 Cal.App.4th 939, 945-946.) "In construing this, or any, statute, our office is simply to ascertain and declare what the statute contains, not to change its scope by reading into it language it does not contain or by reading out of it language it does. We may not rewrite the statute to conform to an assumed intention that does not appear in its language." (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 253.)

"Statutory language is not considered in isolation. Rather, we 'instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.'" (*Bonnell v. Medical Board* (2003) 31 Cal.4th 1255, 1261.) We must also "interpret legislative enactments so as to avoid absurd results." (*People v. Torres* (2013) 213 Cal.App.4th 1151, 1158.)

B. The Statutory Framework and Language of Section 1170.95

"Murder is the unlawful killing of a human being, or a fetus, with malice aforethought." (§ 187, subd. (a).) Though under the felony-murder rule, a defendant can be convicted of murder without malice if a victim is killed during a designated inherently dangerous felony. (See CALCRIM No. 540A ["A person may be guilty of felony murder even if the killing was unintentional, accidental or negligent"].)

Generally, a defendant may be convicted of a crime either as a perpetrator or as an aider and abettor. (§ 31.) An aider and abettor can be held liable for crimes that were intentionally aided and abetted (target offenses); an aider and abettor can also be held liable for any crimes that were not intended but were reasonably foreseeable (nontarget offenses). (*People v. Laster* (1997) 52 Cal.App.4th 1450, 1463.) Liability for

intentional, target offenses is known as "direct" aider and abettor liability; liability for unintentional, nontarget offenses is known as the "'"natural and probable consequences" doctrine.'" (*People v. Montes* (1999) 74 Cal.App.4th 1050, 1055.)

Effective January 1, 2019, the Legislature enacted Senate Bill No. 1437 (2017-2018 Reg. Sess.) to "amend the felony murder rule and the natural and probable consequences doctrine, as it relates to murder, to ensure that murder liability is not imposed on a person who is not the actual killer, did not act with the intent to kill, or was not a major participant in the underlying felony who acted with reckless indifference to human life." (Stats. 2018, ch. 1015, § 1, subd. (f).) As a result, the Legislature amended sections 188 (defining malice), and 189 (defining the degrees of murder).

The Legislature also added section 1170.95 (Stats. 2018, ch. 1015, § 4, eff. Jan. 1, 2019), which provides a procedure for aiders and abettors to challenge their previous murder convictions under prior statutes and legal theories. Section 1170.95 designates: 1) the threshold requirements for relief; 2) the requirements of the petition; and 3) the procedural requirements.

1. The Threshold Requirements for Relief

"(a) A person *convicted of felony murder or murder* under a natural and probable consequences theory may file a petition with the court that sentenced the petitioner to have the petitioner's murder conviction vacated and to be resentenced on any remaining counts when all of the following conditions apply:

"(1) A complaint, information, or indictment was filed against the petitioner that allowed the prosecution to proceed under a theory of felony murder or murder under the natural and probable consequences doctrine.

"(2) The petitioner was convicted of first degree or second degree murder following a trial or accepted a plea offer in lieu of a trial at which the petitioner could be convicted for first degree or second degree murder.

"(3) The petitioner could not be convicted of first or second degree murder because of changes to Section 188 or 189 made effective January 1, 2019." (§ 1170.95, subd. (a), italics added.)

2. The Requirements of the Petition

"(b)(1) The petition shall be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney . . . , and on the attorney who represented the petitioner in the . . . county where the petitioner was convicted. . . . The petition shall include all of the following:

"(A) A declaration by the petitioner that he or she is eligible for relief under this section, based on all the requirements of subdivision (a).

"(B) The . . . court case number and year of the petitioner's conviction.

"(C) *Whether the petitioner requests the appointment of counsel*.

"(2) If any of the information required by this subdivision is missing from the petition . . . , the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that the matter cannot be considered without the missing information." (§ 1170.95, subd. (b)(1),(2), italics added.)

3. The Procedural Requirements

"(c) The court shall review the petition and determine if the petitioner has made a prima facie showing that the petitioner falls within the provisions of this section. If the petitioner has requested counsel, the court shall appoint counsel to represent the petitioner. The prosecutor shall file and serve a response within 60 days . . . and the petitioner may file and serve a reply within 30 days after the prosecutor response is served. . . . If the petitioner makes a prima facie showing that he or she is entitled to relief, the court shall issue an order to show cause.

"(d)(1) Within 60 days after the order to show cause has issued, the court shall hold a hearing to determine whether to vacate the murder conviction and to recall the sentence and resentence the petitioner . . . , provided that the new sentence, if any, is not greater than the initial sentence. . . .

"(2) The parties may waive a resentencing hearing and stipulate that the petitioner is eligible to have his or her murder conviction vacated and for resentencing. If there was a prior finding by a court or jury that the petitioner did not act with reckless indifference to human life or was not a major participant in the felony, the court shall vacate the petitioner's conviction and resentence the petitioner.

"(3) At the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, . . . the conviction, shall be vacated and the petitioner shall be resentenced on the remaining charges." (§ 1170.95, subds. (c) & (d).)

C. Analysis

Bautista argues: "Because of statutory violations, the . . . order denying resentencing should be reversed, and the matter should be remanded to the trial court with directions *to appoint counsel* . . . to allow . . . counsel to file any amended petition[,] . . . to allow the prosecutor to file a statutorily-mandated response . . . and to allow appointed counsel to file any reply . . . *before* the trial court may determine whether [he] has made a 'prima facie showing' that he 'falls within the provisions' of . . . section 1170.95." (Boldfacing and capitalization omitted, italics added.) We disagree.

Under the statute, "[a] *person convicted of felony murder or murder* under a natural and probable consequences theory *may file a petition* with the court . . . ." (§ 1170.95, subd. (a), italics added.) Within the section 1170.95 petition, the petitioner may further request the appointment of counsel. (§ 1170.95, subd. (b)(1)(C).) But once a

petitioner has filed a section 1170.95 petition—whether the petition includes a request for counsel or not—the statute provides: "The court *shall review* the petition and determine if the petitioner has made a *prima facie showing* that the petitioner falls within the provisions . . . ." (§ 1170.95, subd. (c), italics added.) Thus, a trial court is not first required to appoint counsel for the petitioner before reviewing the petitioner's section 1170.95 petition and making the threshold prima facie determination as to whether the petitioner falls within the provisions of the statute.

Further, the Legislature must have intended that when a person files a section 1170.95 petition, the court may look beyond the four corners of the petition—to the underlying case and the record of conviction—in order to determine whether the petitioner actually falls within the provisions of the statute. (See *Meyer v. Glenmoor Homes, Inc.* (1966) 246 Cal.App.2d 242, 251 ["'Prima facie evidence is that which suffices for the proof of a particular fact, until contradicted and overcome by other evidence'"]; see also *In re Estate of Woodson* (1939) 36 Cal.App.2d 77, 80 ["*Prima facie* evidence is not conclusive evidence; it simply denotes that the evidence may suffice as proof of a fact until or unless contradicted and overcome by other evidence"].)

In sum, we find that the Legislature intended trial courts to implement the procedural provisions of section 1170.95 exactly as the court did in this case. That is, the court reviewed Bautista's petition, compared it to Bautista's underlying case, and determined that he was not actually a person that had been convicted of murder, as Bautista had claimed in his section 1170.95 petition.

Bautista's proposed interpretation of section 1170.95—that the court must appoint an attorney for every person that asks for one (and prior to making the prima facie determination)—would violate the statutory framework and would lead to absurd results. For instance, suppose a person convicted of making criminal threats (§ 422) filed a section 1170.95 petition and asked for an attorney. Under the plain meaning of the statute, the court would simply need to review its records in order to summarily deny the

petition. But according to Bautista's proposed interpretation of the statute, the court would first need to make an unwarranted appointment of counsel *before* ruling that the petitioner did not make a prima facie showing. The Legislature could not have intended such an absurd waste of time and resources. Thus, the trial court did not commit error by making its prima facie determination without first appointing Bautista counsel.

Bautista argues that: "Any appointed counsel could only effectively assist a petitioner like [him] if the appointment occurred *before* the final form of the re-sentencing petition were settled and *before* the petitioner's 'prima facie showing' were considered and determined by the trial court." We disagree.

Section 1170.95 requires that a petitioner file a declaration, which includes only minimal information: the basis for relief under the statute (a conviction for murder as an aider and abettor), and the year and number of the underlying case. (See § 1170.95, subd. (b)(1)(A), (B).) This information would presumably be known to the petitioner and is otherwise readily available; a petitioner would ordinarily not require the assistance of counsel in order to meet these basic requirements. Further, there are procedural protections built into the statutory scheme. That is, if a petitioner fails to include the required information, the court can deny the petition without prejudice, and "advise the petitioner that the matter cannot be considered without the missing information." (§ 1170.95, subd. (b)(2).)

Moreover, if a trial court ultimately denies the section 1170.95 petition, an unsuccessful petitioner can further pursue the procedural protections of appellate review, as Bautista did in this case. (See § 1237, subd. (b) [a defendant has the right to appeal "any order made after judgment, affecting the substantial rights of the party"].)

III

DISPOSITION

The trial court's order denying the section 1170.95 petition is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.